

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Charter Communications)	CSR 6453-E
)	
)	
Petition for Determination of Effective Competition)	

MEMORANDUM OPINION AND ORDER

Adopted: January 24, 2007

Released: January 25, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers a petition which Charter Communications ("Charter") filed with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that such operator is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act"),¹ and the Commission's implementing rules,² and is therefore exempt from cable rate regulation in Owatonna, Minnesota. No opposition to the petition was filed. Finding that Charter is subject to effective competition, we grant the petition.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵

II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the

¹ 47 U.S.C. § 543(1).

² 47 C.F.R. § 76.905(b)(4).

³ 47 C.F.R. § 76.906.

⁴ See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁵ See 47 C.F.R. §§ 76.906 & 907.

households in the franchise area.⁶ Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirectTV") and DISH Network ("Dish") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁷ The two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the third largest, MVPD provider.⁸ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in Owatonna are DBS subscribers, we conclude that the population of the community at issue may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁹ We further find that Charter has demonstrated that Owatonna is served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Charter sought to determine the competing provider penetration in Owatonna by purchasing a subscriber tracking report that identified the number of subscribers attributable to the DBS providers within Owatonna on a zip code basis. Charter asserts that it is the largest MVPD because its subscribership exceeds the aggregate DBS subscribership for the franchise area. Based upon the aggregate DBS subscriber penetration levels, calculated using 2000 Census household data, we find that Charter has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, is 17 percent in Owatonna.¹⁰ Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Charter has submitted sufficient evidence demonstrating that its cable system serving Owatonna is subject to competing provider effective competition.

⁶ 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸ *Twelfth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73, 21 FCC Rcd 2503 (rel. March 3, 2006).

⁹ *See* 47 C.F.R. § 76.905(g).

¹⁰ $1,476 \text{ DBS subscribers} \div 8,704 \text{ Owatonna households} = 17.0\%$.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petition filed by Charter Communications for a determination of effective competition in Owatonna, Minnesota **IS GRANTED**.

6. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any local franchising authority overseeing Charter Communications **IS REVOKED**.

7. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹¹

FEDERAL COMMUNICATIONS COMMISSION

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¹¹47 C.F.R. § 0.283.